IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4462 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE AMBA INDUSTRIAL (ESTATE)ASSOCIATION - Petitioner(s)

Versus

REGISTRAR NON TRADING CORPORATION & 1 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1,
MR VC DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/02/2006

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Registrar, Non-Trading Corporation, State of Gujarat, dated 14.5.1998 in cancelling the registration of the petitioner as 'Non-Trading Corporation' under the

provisions of the Bombay Non-Trading Corporations Act, 1969 [hereinafter referred to as “the Act”].

2. Shri VC Desai, learned advocate has submitted that he represented respondent No.2 who was joined as such as per the order dated 21.10.2005 passed in Civil Application No. 15049 of 1999 on the basis of the application dated submitted by him. However, thereafter he has tried to contact the respondent No.2 by writing a letter dated 23.11.2005 Under Certificate of Posting. However, he has no instruction from the said respondent and that he is not in a position to contact the said respondent. A copy of the said letter is produced before this Court which is directed to be taken on record. In view of the fact that this matter is of 1998, it is taken up for final hearing today.

3. Shri Mehta, learned advocate appearing for the petitioner has submitted that the Registrar, Non-Trading Corporation has passed the impugned order in exercise of power under Section 51 of the Act at the instance of the respondent No.2 with whom the petitioner has a civil dispute and the reason due to which the registration came to be cancelled does not fall within the purview of Section 51 of the Act. It is, therefore, requested to allow the present Special Civil Application.

4. After going through the provisions of Section 51 of the Act, Ms. Archana Raval, learned AGP is not in a position to satisfy this Court how the provisions of Section 51 of the said Act could have been invoked by the Registrar.

5. I have gone through the order dated 14.5.1998 passed by the Registrar, Non-Trading Corporations, State of Gujarat, which is impugned in the petition and it appears that the impugned order has been passed in exercise of power under Section 51 of the said Act. Section 51 of the said act reads as under;

> “51. When the affairs of a corporation for which a liquidator has been appointed under section 50 have been wound up, or, when no liquidator has been appointed after two months from the date of an order under section 50 or, after confirmation of such order in appeal, the Registrar shall make an order cancelling the registrarion of the corporation, and the corporation shall be deemed to be dissolved from the date of such order.”

Considering the provisions of Section 51 of the Act, the case does not fall within the ambit of the said Act and therefore the order passed by the Registrar impugned in the present Special Civil Application is

without jurisdiction inasmuch as the provisions of

the said Section 51 could not have been invoked by the Registrar while passing the impugned order.

6. For the reasons stated above, the petition succeeds. The impugned order passed by the Registrar, Non-Trading Corporations, dated 14.5.1998 is hereby quashed and set aside. Rule is made absolute, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.